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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Estate of JOAQUIN VALENCIA AVILA, Deceased.	H036765 (Santa Clara County Super. Ct. No. PR164393)
JOAQUIN A. VALENCIA, Petitioner and Respondent, v. DORA CELIA ALVAREZ GOMEZ, Objector and Appellant.	

Petitioner and respondent Joaquin Valencia's parents purchased a house in San Jose. When they retired, Valencia's parents moved back to Mexico and told Valencia that the house was his if he took over the mortgage payments and paid the property taxes and insurance premiums. Valencia moved into the house in 1994 and paid the mortgages, taxes, and insurance for approximately 17 years. The house, which had been a rental for a number of years, was in disrepair and Valencia made numerous improvements to the property. Valencia's mother passed away in December 2006. In 2007, Valencia's father married objector and appellant Dora Celia Alvarez Gomez in Mexico. Valencia's father passed away in April 2008 and Gomez was named the sole heir and executor of his estate

in Mexico. Gomez appointed Jose Anguiano to serve as her personal representative in the United States. Anguiano filed a probate action on Gomez's behalf, identifying the house that Valencia lived in as the sole asset of the estate. In June 2010, Valencia filed a petition pursuant to Probate Code section 850[1] to determine title to the property and to require Anguiano to transfer the property to him, on resulting trust and constructive trust theories. Gomez filed a written objection and then a demurrer based on the statute of limitations. After the court overruled Gomez's demurrer, the case proceeded to trial. The court granted Valencia's petition, concluded that a constructive trust was the appropriate remedy,[2] and ordered Anguiano to transfer the property to Valencia. Gomez appeals.

On appeal, Gomez challenges the trial court's order overruling her demurrer, arguing that the petition was time-barred under Code of Civil Procedure section 366.3 because it was filed more than one year after Valencia's father died. She also argues there was insufficient evidence of a constructive trust under *Haskell v. First Nat'l Bank* (1939) 33 Cal.App.2d 399 (*Haskell*) and *Mulli v. Mulli* (1951) 105 Cal.App.2d 68 (*Mulli*). We conclude that the trial court properly overruled the demurrer and that substantial evidence supports the court's order after trial. We will therefore affirm the order.

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[1] Unless otherwise stated, all further statutory references are to the Probate Code.

[2] As the trial court noted, a constructive trust is an equitable remedy used to prevent unjust enrichment and enforce restitution. (*Haskel Engingeering & Supply Co. v. Hartford Acc. & Indem. Co*. (1978) 78 Cal.App.3d 371, 375.) By contrast, a resulting trust is traditionally applied in circumstances showing that the beneficial interest was not intended to remain with the original transferee. (*American Motorists Ins. Co. v. Cowan* (1982) 127 Cal.App.3d 875, 884-885.)

FACTS[3]

The real property at issue is located at 133 Marian Lane in San Jose (hereafter "the Marian House"). Valencia described the Marian House as a "smaller single-family residence" located in the Alum Rock area of San Jose. It was a three-bedroom, one-bath detached house with a carport and no garage, a "little over 1,000" square feet in size. Both counsel estimated the value of the Marian House at $250,000, while the court suggested that the property's value was in the low $300,000 range.

Valencia is the only child of Joaquin Valencia Avila (Father) and Elvira Valencia (Mother, sometimes jointly Parents).[4] Valencia was born in Mexico in 1971 and came to

[3] The facts are based on Valencia's verified petition pursuant to section 850 and the evidence presented at the court trial on the petition.

[4] The petition for probate lists the decedent's name as "Joaquin Valencia Avila." Valencia's father is referred to in the record as "Joaquin Valencia Avila," "Joaquin Valencia Vela," and "Joaquin Valencia Avila, aka Joaquin A. Valencia." Valencia's mother is referred to as "Elvira Valencia" and "Elvira Amador Pliego." Presumably, the latter was her maiden name. In his petition pursuant to section 850 and verifications, Valencia (the son) used the name "Joaquin A. Valencia." He is also referred to in the record as "Joaquin Valencia," "Joaquin Valencia Amador," and "Joaquin Amador Valencia." For ease of reference, and meaning no disrespect, we shall refer to the petitioner as "Valencia" and to his parents as "Father" and "Mother," and sometimes jointly as "Parents."

The original probate petition filed by Anguiano states that Father had a second son, Alfredo Valencia Amador. On October 24, 2007, Father appeared before a notary in Colima, Mexico and made an oral testamentary statement that the parties refer to as a codicil, which the notary documented in writing and certified. The codicil modified the second clause of an oral will that Father made on September 18, 2006. According to the codicil, father stated in the will that he had been married to Elvira Amador Pliego, deceased, "with whom he had no children." The codicil corrected the will and stated that Father "had two children" with Elvira Amador Pliego, "Alfredo Valencia Amador and Joaquin Valencia Amador." At trial, Valencia testified that Mother had a son from a prior marriage who was "never part of the family or around or anything like that . . . ." The record on appeal suggests that Alfredo Valencia Amador is not a party to the probate action. Although the record contains copies of documents in Spanish memorializing the October 2007 oral codicil, plus English translations of those documents, it does not contain comparable documents memorializing the September 2006 oral will.

the United States with his parents when he was a baby. Parents purchased the Marian House in February 1975, when Valencia was 3 years old.

In 1986 or 1987, when Valencia was 15 or 16 years old, Parents purchased another home in the Evergreen area of San Jose. The family moved to the house in Evergreen, and kept the Marian House as a rental.

Parents moved to Mexico in the early 1990's, after Father retired from the automotive and auto body business. Valencia testified that when his parents bought the Marian House, they "always had the idea . . . that [it] would be for [him]" and that it would be his house. "[T]hey always knew they were going to give [him] that home." When they moved to Mexico, Parents told Valencia that the Marian House was going to be his, but that he had to pay the mortgages, property taxes, and insurance.

In 1994 or 1995, when Valencia was about 23 years old, he moved into the Marian House. The house had been "completely destroyed" and was in "very, very bad condition." It was infested with rats, cockroaches, and bugs; windows were broken, the roof leaked, moldings were damaged, doorknobs and doors were missing, and there was water damage throughout the house. Valencia discussed the condition of the house with his parents and they told him he was responsible for fixing everything.

Valencia has lived in the Marian House continuously since 1994 or 1995. During that time, he has paid the mortgages, property taxes, and insurance without contribution from anyone.

When Valencia took over the property, it was encumbered by first and second mortgages, with monthly payments of approximately $800 per month for both. Valencia paid off the existing mortgages in 2005. Later that year, Parents borrowed $54,000 against the property, "with the express agreement and understanding" that Valencia would make the payments on the new mortgage, which were approximately $500 per month. Parents used the loan proceeds to repair a house they had purchased in Mexico

and for other expenses. Valencia made the payments on the new mortgage as promised, without any contribution from anyone.

Valencia made numerous improvements to the Marian House, including: replacing the lawn; installing new sprinklers and a concrete driveway; trimming trees; installing new front doors, flooring, and molding; painting inside and out; rebuilding interior walls; replacing windows; repairing the roof and gutters; and installing new wiring, plumbing, and a water heater. Valencia contracted for some of the work and did some of the work himself. Valencia paid for all of the improvements, without contribution from Parents or anyone else.

In his verified petition, Valencia alleged that he spent over $100,000 on improvements; at trial, he testified that he spent more than $150,000 on improvements. But Valencia was unable to produce receipts to corroborate much of the amount claimed. Valencia testified that he paid Diaz Roofing $7,000 to $8,000 for a new roof in 2004; that he spent $12,000 for tile work in 2005; and $7,000 to $8,000 for the lawn and sprinkler system in 2005.

After Valencia's parents moved to Mexico, they visited him once or twice a year and stayed at the Marian House; sometimes they stayed for a couple of months. During those visits, Valencia discussed the ownership of the Marian House with them "probably over 100 [or] 200 times." Typically, after commenting on an improvement he had made, Parents said they were happy that they had not sold the house and that they had given it to him. They also told Valencia they were going to transfer title to the Marian House to him.

Although Valencia paid the mortgages, property taxes, and insurance, Parents continued to claim the mortgage interest and property tax deductions on their income taxes. A "couple [of] times," Valencia and Parents discussed transferring title to the Marian House to Valencia. Father said "there was no rush" putting the house in Valencia's name because Father wanted to continue to claim the tax deductions. Parents

never said they were not going to leave Valencia the house, and "[i]t was understood" that it was already his house.

Mother died on December 25, 2006 in Mexico. Thereafter, Father continued to live in Mexico; Valencia remained in contact with Father and Father continued to visit him in California. Shortly before Mother died, Valencia asked Parents to transfer title to the Marian House to him since he wanted to take advantage of the tax deductions for the mortgage and property taxes he was paying.

After Mother died, Valencia discussed the ownership of the Marian House with Father. Father said he wanted to make sure Valencia kept the house and said he was going to bring the "paperwork" with him the next time he visited. But on his last visit to California, Father forgot to bring the "paperwork." Father told Valencia not to worry and said he would get the documents together "to get this done" the next time he visited. Father told Valencia not to worry because they had the same name and said, " 'All the paperwork is in your name anyways.' "

According to Valencia's petition, after Mother died, Father "became increasingly distracted, was not himself, and became less and less communicative." Valencia later learned that in 2007 Father had married Gomez, who was the sister of Father's housekeeper and 33 years his junior.

Father died on April 7, 2008, approximately one year after he married Gomez. At the time of his death, Father owned several real properties in Mexico.

Valencia had spoken with Father shortly before he died and reminded Father to bring the paperwork to deed the Marian House to him the next time he visited; Father said he would. But Father died without returning to California.

Alma Ponce testified on Valencia's behalf. Parents were Ponce's godparents. As a child, Ponce lived with Parents in Mexico. As a teenager, Ponce lived with Parents in the Marian House and later moved with the family to the house in Evergreen. After Parents retired, Ponce visited them in Mexico more than 10 times and saw them almost

every day when they visited San Jose. Ponce heard Parents talk to Valencia about the Marian House hundreds of times. They said they had given the house to Valencia and that "[it] was his house." Father liked to brag that the Marian House was Valencia's house. Ponce testified that Mother had open heart surgery in California at an unspecified time. Ponce was with Mother before and after the surgery and asked Mother whether her affairs were in order. They talked about the Marian House and Mother repeatedly told Ponce that "the house is Joaqui's," referring to Valencia.

PROCEDURAL HISTORY

On Father's death, Gomez was named his sole heir and executor of his estate in Mexico. Gomez appointed Anguiano, a family friend, to serve as her personal representative to investigate assets in the United States. In January 2009, Anguiano filed a probate action in Santa Clara County, in which he claimed the Marian House as the sole asset of the estate.

In June 2010, Valencia filed a petition in the probate action pursuant to section 850 (hereafter sometimes "section 850 petition") to determine title to the Marian House and to require Anguiano to transfer the property to him, on resulting trust and constructive trust theories. According to the petition, Valencia never received notice of Gomez's probate action and "was shocked when he was contacted by a realtor in April, 2010 and advised that his home was to be listed and sold as part of his father's estate."

Gomez filed a written objection to the section 850 petition on August 17, 2010. Nine days later, Gomez filed a demurrer, attacking the petition on three grounds, including the statute of limitations. Although Gomez cited Code of Civil Procedure sections 366, 366.3, and "366.2(3)," it appears her statute of limitations challenge was

based on Code of Civil Procedure section 366.3.[5] The court overruled Gomez's demurrer and the allegations of Valencia's section 850 petition were tried to the court.

Although Anguiano appeared at trial, Gomez did not appear. Gomez did not present any witnesses or documentary evidence at trial. The court concluded that a constructive trust was an appropriate remedy under *Mulli, supra,* 105 Cal.App.2d 68, 73 and *Haskell, supra,* 33 Cal.App.2d 399, 402. The court granted Valencia's section 850 petition and ordered Anguiano to transfer the property to Valencia. Gomez appeals.

DISCUSSION

Gomez challenges the trial court's ruling on the demurrer, arguing that the applicable statute of limitations is Code of Civil Procedure section 366.3, and that Valencia was therefore required to file his petition within one year of Father's death. Valencia argues that the applicable limitations period is the four-year period in Code of Civil Procedure section 343 and that his cause of action did not accrue until April 2010, when he first became aware of a conflicting claim to the Marian House.

Gomez also challenges the sufficiency of the evidence to support the court's constructive trust ruling under *Mulli* and *Haskell.* Valencia counters that there was substantial evidence to support the imposition of a constructive trust.

I. Statute of Limitations

A. Adequacy of Appellant's Record and Briefing

One of the fundamental rules of appellate review is that an appealed judgment or order is presumed correct. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown."

[5] There is no Code of Civil Procedure section 366 or section 366.2, subdivision (3). Gomez's moving papers quoted from Code of Civil Procedure section 366.3.

(*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) As the appellant, Gomez has the burden of overcoming the presumption of correctness, and she must provide this court with an adequate record demonstrating the alleged error. Failure to provide an adequate record on an issue requires that the issue be resolved against her. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Gee v. American Realty & Construction, Inc*. (2002) 99 Cal.App.4th 1412, 1416 [" 'if the record [on appeal] is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed' "].)

The record on appeal regarding the statute of limitations issue consists of Gomez's notice of hearing, demurrer, and points and authorities in support of the demurrer, but not Valencia's points and authorities in opposition to the demurrer. The record contains a copy of Gomez's reply to Valencia's opposition to the demurrer, and her "Further Reply" to Valencia's opposition, but does not include a reporter's transcript of the hearing on the demurrer. The record contains a notice of ruling on the demurrer signed by Gomez's counsel, but does not contain either a minute order or a written order signed by the court setting forth its ruling on the demurrer. Thus, the record of the proceedings on the demurrer is both incomplete and one-sided, presenting only Gomez's arguments below and no information regarding Valencia's opposition or the court's reasons for overruling the demurrer.[6] This is particularly troubling, since Gomez's demurrer merely quoted Code of Civil Procedure section 366.3 and argued that the section 850 petition was barred because it was filed more than one year after Father died.

In *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 (*Wagner*), the court held that by failing to include a transcript of the hearing at issue or a copy of the minute order in the record, the appellant had forfeited her contention that the trial court abused its

[6] Gomez's opening brief also makes reference to matters that are not in the record. We shall disregard any statements in the brief that are based on matters that are outside the appellate record. (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.)

discretion. And in *Osgood v. Landon* (2005) 127 Cal.App.4th 425 (*Osgood*), the court stated that the record is inadequate and the appellant defaults, " 'if the appellant predicates error only on the part of the record he provide[d] the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.' " (*Id.* at p. 435, quoting *Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.) That is exactly what occurred here. Since we do not have Valencia's opposition papers or any record of the trial court's ruling, we do not know whether Valencia argued that Code of Civil Procedure section 366.3 was inapplicable to his petition, whether he argued that some other limitations period applied, whether he asserted that Gomez was equitably estopped from relying on the statute of limitations for lack of notice to him, or whether the trial court agreed with any of those arguments.

Appellant's burden also includes the obligation to present reasoned argument and citation to authority on each point raised. When the appellant asserts a point but fails to support it with appropriate analysis and legal authority, the appellate court may treat it as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Here, Gomez quotes Code of Civil Procedure section 366.3 and cites brief passages from four cases, but she does not provide any analysis of the cases cited or any reasoned argument as to why section 366.3 applies to the facts of this case.

Following *Osgood* and *Wagner*, we conclude that Gomez's failure to provide an adequate record of the proceedings relating to her statute of limitations challenge requires that the issue be resolved against her. Gomez's cursory treatment of the statute of limitations in her briefing further supports the conclusion that she has not met her burden on that issue.

As we next explain, even on the merits, we conclude that Code of Civil Procedure section 366.3 does not apply to the facts presented here.

B. Timeliness of the Section 850 Petition

Once a probate proceeding has commenced, "[t]he personal representative or any interested person" may seek an order directing a conveyance or transfer of property "[w]here the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another." (§§ 850, subd. (a)(2)(C), 856.)

According to section 856 (and subject to exceptions not applicable here), "[i]f the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief." "Section 850 et seq. provides a mechanism for court determination of rights in property claimed to belong to a decedent or another person." (*Estate of Young* (2008) 160 Cal.App.4th 62, 75 (*Young*).) The statutory scheme's "evident purpose" is to carry out the decedent's intent and to prevent looting of estates. (*Id*. at p. 92.)

" 'Statutes of limitation are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.' " (*Young*, *supra*, 160 Cal.App.4th at p. 76, quoting *Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1188–1189 (*Parker*).)

The Probate Code does not specify a time limit for filing a section 850 petition. Logically, the petition should be brought before the estate is closed and disappears as a legal entity. (Cal. Decedent Estate Practice (Cont.Ed.Bar 2d ed. 2009) § 27.7, p. 1329 (rev. 6/11).) In addition, the section 850 petition must be filed before the expiration of any applicable limitations period. (*Ibid.*)

In *Parker*, the Court of Appeal noted the Supreme Court's holding in *In re Estate of Hume* (1918) 179 Cal. 338 "that the statute of limitations cannot be asserted in proceedings for the probate or contest of a will." (*Parker, supra,* 5 Cal.App.4th at pp. 1186.) *Parker* reasoned, however, that "it does not follow that all proceedings which begin in probate court are likewise exempt from statutes of limitations" and held that proceedings to determine title to property under former sections 9860-9868 (the predecessor statutes to section 850) are subject to limitations statutes. (*Parker, supra,* at pp. 1186-1189; see Historical and Statutory Notes, 52 West's Ann. Prob. Code (2002 ed.) foll. § 850, pp. 432-433 & Historical and Statutory Notes, 53A West's Ann. Prob. Code (1991 ed. & 2012 Supp.) foll. § 9860, pp. 644-645 & p. 110 of the Supp.)

" 'The statute of limitations to be applied is determined by the nature of the right sued upon, not the form of the action or the relief demanded.' " (*Parker, supra,* 5 Cal.App.4th at p. 1189, quoting *Day v. Greene* (1963) 59 Cal.2d 404, 411.) " 'Neither the caption, form, nor prayer of the complaint will be deemed conclusive in determining the nature of the liability from which the cause of action flows. On the contrary, the true nature of the action will be ascertained from the basic facts *a posteriori*.' " (*Parker, supra,* at p. 1189.) For claims against an estate, the limitations period is determined by the nature of the claims on which a section 850 petition is based. (*Id. at* 1185-1189.)

Gomez contends that Valencia's section 850 petition is subject to Code of Civil Procedure section 366.3, which states in part: "(a) If a person has a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument, whether the promise or agreement was made orally or in writing, an action to enforce the claim to distribution may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply."

Valencia argues that Code of Civil Procedure section 366.3 does not apply because he did not seek a "distribution" from Father's estate. Instead, he sought to enforce his rights as owner of the Marian House. He argues that "[h]is claim is not

triggered [by] or dependent on the death of [Father]; he has owned the property for many years (equitably), and it is the repudiation of his right to title (proposed sale by the trustee) *not the death of his father* which has ripened the claim. Indeed, . . . , this property is not even part of an estate; and can't be 'distributed' in the estate context." Valencia relies on *Mulli* for the proposition that in a case involving "a voluntary trust the period of limitation commences to run from the time the beneficiary acquired knowledge that the trust has been repudiated." (*Mulli*, *supra*, 105 Cal.App.2d 68, 74-75.)

The Court of Appeal for the First District recently discussed the types of claims that trigger the limitations period in section 366.3 in *Maxwell-Jolly v. Martin* (2011) 198 Cal.App.4th 347 (*Maxwell-Jolly*). The issue in *Maxwell-Jolly* was "which statute of limitations applies when a person who received health care services funded by Medi-Cal during her or his lifetime dies with assets held in trust, and the State Department of Health Care Services (DHCS) seeks to recover the Medi-Cal payments from the trustee and distributees of the trust." (*Id.* at p. 349.) The trustee and distributees in *Maxwell-Jolly*, argued that the one-year limitations period in Code of Civil Procedure section 366.3 applied since it governs claims that arise " 'from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument.' " (*Ibid.*) The DHCS argued that the three-year statute in Code of Civil Procedure section 338, subdivision (a) applied since it governs actions " 'upon a liability created by statute.' " (*Ibid.*) The court agreed with DHCS. The court explained that the "main objective" of the legislation that enacted Code of Civil Procedure section 366.3 "was to clarify the length of the statute of limitations for claims premised on a contract to make or not make a will or trust and to subject all such claims to the same limitations period." (*Maxwell-Jolly*, *supra*, at p. 362.)

In *Maxwell-Jolly*, the court discussed a number of cases that had applied Code of Civil Procedure section 366.3 and concluded that the promise or agreement to make a distribution for the estate or trust must be express to come within section 366.3, as

illustrated by *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509 (*Ferraro*), a case that Gomez cites. (*Maxwell-Jolly*, *supra*, 198 Cal.App.4th at pp. 358-359.)

In *Ferraro*, a husband and wife, each of whom had two children from previous marriages, agreed "orally and in writing" that the surviving spouse would leave all of their remaining assets to the four children in equal shares. (*Ferraro*, 161 Cal.App.4th at pp. 517, 519.) "After the husband died, the wife made a will and trust leaving everything to her own two children. One of the husband's children, Patricia, filed an action within a year but her sister, Sandra, did not join in that action." (*Maxwell-Jolly*, at p. 359, citing *Ferraro*, at p. 519.) More than a year after the wife died, Sandra filed both a civil action and a creditor's claim in probate proceedings initiated by her stepsister as administrator of the will. Sandra sought one-quarter of the estate and asserted causes of action including breach of contract, fraud, and conversion. (*Ferraro*, at pp. 521, 527.) When the claim was rejected by the administrator, Sandra filed another civil action. (*Id*. at p. 527.) The Court of Appeal concluded that both lawsuits were untimely under Code of Civil Procedure section 366.3 because the causes of action arose out of the wife's promise or agreement with her husband regarding the distribution of their estate. (*Id.* at pp. 555-556.) The court held the intent of Code of Civil Procedure section 366.3 was "to reach any action predicated upon the decedent's agreement to distribute estate or trust property in a specified manner" and held that, even though Sandra asserted tort causes of action in addition to a contract theory, her lawsuits were based on the broken promise between her father and his wife. (*Ferraro*, at p. 555.)

The *Maxwell-Jolly* court observed that the agreement in *Ferraro* was an express agreement negotiated between husband and wife regarding the distribution of their estate and was distinguishable from the DHCS claim, which was based on statute. (*Maxwell-Jolly*, *supra*, 198 Cal.App.4th at p. 359.) *Maxwell-Jolly* also observed that "other cases applying section 366.3 to bar a claim involved express promises made by a decedent to award an individual an asset or sum of money from his or her estate, in

exchange for care rendered to the decedent or otherwise." (*Ibid.*, citing *McMackin v. Ehrheart* (2011) 194 Cal.App.4th 128, 135 (*McMackin*) [decedent orally agreed to leave cohabitant life estate in shared home]; *Estate of Ziegler* (2010) 187 Cal.App.4th 1357, 1360–136 (*Ziegler*) [decedent made written promise that his neighbors, who had cared for him in his final years, would get his house upon his death]; *Stewart v. Seward* (2007) 148 Cal.App.4th 1513, 1516, 1522–1523 [decedent orally promised to execute a will leaving his stepdaughter half of the marital residence he had shared with her predeceased mother, but then left the entire estate to his grandchildren]; *Embree v. Embree* (2004) 125 Cal.App.4th 487, 490 [husband promised in written marital settlement agreement to establish a trust for the continued payment of spousal support if he predeceased his ex-wife].)

The cases cited above on which Gomez relies all involved express promises to make a distribution from an estate or trust upon the promisor's death. In contrast, this case involves an agreement during Mother's and Father's lifetimes to give Valencia the Marian House if he moved in and paid the mortgages, taxes, insurance, and made improvements. The agreement was fully executed by Valencia while Parents were alive and all that remained to be done was to deed the property to Valencia. There was no evidence that Parents promised to give Valencia the house after they died or to leave it to him in their will. In our view, this case is distinguishable factually from the cases that Gomez relies on, all of which contained promises of distributions after the promisor's death. Since this case does not involve "a claim that arises from a promise or agreement with a decedent to distribution from an estate or trust or under another instrument," as described in Code of Civil Procedure section 366.3, we conclude that the limitations period in that section does not apply to Valencia's section 850 petition.

A case cited by Gomez herself supports our conclusion. The *Ziegler* court observed that "one would not normally refer to the award of specific property to a person who is claiming it as the true owner, adversely to the decedent, as a 'distribution.' "

(*Ziegler, supra,* 187 Cal.App.4th at p. 1365.) The court continued, "[w]e may assume, without deciding, that a claim based on a contract to make a will is either a creditor's claim or a claim to specific property and hence is not a claim for a 'distribution' in the technical sense. [Citations.] Even if so, it is a claim for a 'distribution' in the sense that the Legislature intended." (*Ibid.*) The court concluded that the claim of a neighbor, who had provided care for the decedent based in part on a written agreement by the decedent to transfer his home and property to the neighbor upon death in exchange for such care, was "indistinguishable from a claim on a contract to make a will." (*Id.* at pp. 1361, 1365.) "The Agreement was a promise to transfer property upon death. It could be performed only after death, by the decedent's personal representative, by conveying property that otherwise belonged to the estate." (*Id.* at p. 1365.) In contrast, Father's promise to convey the Marian House to Valencia was not to be effective only upon Father's death. Valencia had fully performed, Parents recognized that the property was his, and Father promised that transfer of the property to Valencia would occur while Father was still alive.

We conclude that Gomez has not met her burden of demonstrating that the trial court erred when it overruled her demurrer to the section 850 petition.

II. Sufficiency of the Evidence to Support a Constructive Trust

Gomez challenges the sufficiency of the evidence supporting the order that Anguiano convey title to the Marian House to Valencia. She argues there was no evidence to trigger the application of *Haskell* and *Mulli*. We disagree.

A. Standard of Review

"The trial court's factual findings . . . are subject to limited appellate review and will not be disturbed if supported by substantial evidence." (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162; accord *Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 563.)

An appellate court is "not in a position to weigh any conflicts or disputes in the evidence. Even if different inferences can reasonably be drawn from the evidence, [the appellate court] may not substitute [its] own inferences or deductions for those of the trial court. [Its] authority begins and ends with a determination of whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, which will support the judgment. [Citations.] Therefore, we must consider all of the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference from the evidence tending to establish the correctness of the trial court's decision, and resolving conflicts in support of the trial court's decision." (*Estate of Beard* (1999) 71 Cal.App.4th 753, 778-779.)

B. Analysis

Both *Haskell* and *Mulli* applied the following rule from section 50 of the Restatement of Trusts: " 'Although a trust of an interest in land is orally declared and no memorandum is signed, the trust is enforceable if, with the consent of the trustee, the beneficiary as such enters into possession of the land or makes valuable improvements thereon or irrevocably changes his position in reliance upon the trust.' "[7] (*Haskell*, *supra*, 33 Cal.App.2d at p. 402; *Mulli*, *supra*, 105 Cal.App.2d at p. 73.) This rule "is similar to the rule under which oral gifts of land or contracts for the sale of land become enforceable on the ground of part performance. But underlying all this reasoning is the principle that an oral trust in land is not a nullity but is voidable at the election of the voluntary trustee, and when such trustee has by his conduct ratified and affirmed the trust and induced others to change their position because of it, the doctrine of equitable estoppel comes into play." (*Haskell*, at p. 402.)

[7] This provision was continued without change in the Restatement Second of Trusts.

In *Haskell*, the plaintiffs (Daisy Haskell and presumably her children) sued to establish "that certain real property standing in the name of Lois Atwell (deceased) was held by the defendant [First National Bank], as trustee under the will of Mrs. Atwell, as a constructive trustee for these plaintiffs because of an express or resulting trust created by the deceased whereby she undertook and assumed to hold the property as a voluntary trustee for these plaintiffs." (*Haskell, supra*, 33 Cal.App.2d at p. 400.) The trial court agreed and found for the Haskells. (*Ibid.*)

The facts in *Haskell* were undisputed. "Daisy Haskell had been raised from childhood in the home of Mrs. Atwell, who treated her as a daughter. In 1925 Mrs. Atwell expressed the desire of purchasing a home for Daisy and her family, but insisted that it be held in trust for the benefit of Daisy and her children and not subject to the debts of Mr. Haskell." (*Haskell, supra*, 33 Cal.App.2d at p. 401.) The following year, Atwell purchased the property at issue "in her own name and the Haskells were put in exclusive possession. They gave up their former home, made substantial and permanent improvements on the new place, paid the insurance and taxes, and were permitted to occupy the premises rent free. A room was provided for Mrs. Atwell, who expressed the intention of living with the Haskells. On many occasions she declared to numerous witnesses that she held title to the property as trustee for Mrs. Haskell and her children and that she had executed a deed to protect the interests of the beneficiaries. In her will . . . , she recited that: 'I have heretofore deeded [the property] to my friend Daisy A. Haskell, with provision in said deed for the final distribution of said property upon the death of said Daisy A. Haskell.' " (*Ibid.*) "Mrs. Atwell died on October 28, 1928, but the deed mentioned in her will and in her frequent conversations was not found. She did not at any time . . . repudiate the trust, alter her expressed intention of her trusteeship, or give to the beneficiaries any indication that they could no longer rely upon her frequent promises." (*Ibid.*) The *Haskell* court found that a constructive trust remedy was appropriate. (*Ibid.*)

Mulli involved three oral agreements between Viva Armstrong Mulli and her sister-in-law, Marion Mulli. Marion was divorced and owned record title to a house in San Francisco, subject to a mortgage. In December 1936, Viva and Marion entered into an oral agreement that Viva and her husband Jack Mulli (Marion's brother) would pay off the remaining mortgage debt in monthly installments. (*Mulli, supra,* 105 Cal.App.2d at p. 70.) In exchange, Marion agreed (1) to grant Viva and Jack an undivided one-half interest in the property, (2) to hold that interest for Viva and Jack's benefit, (3) to allow them to live in the house as long as they desired, (4) to convey their one-half interest to Viva and Jack on demand, and (5) if the property was sold "prior to the actual conveyance of title," to give Viva and Jack one half of the proceeds of the sale. (*Id.* at pp. 70-71.) Between December 1936 and October, 1947, Viva and Jack spent $8,986.60 to pay off the mortgage. (*Id.* at p. 71.)

In addition, Viva and Marion orally agreed that (1) they would live together in the house; (2) they would establish a joint bank account; (3) Marion would deposit whatever income she received into the account; (4) Viva would deposit whatever funds were necessary for the expenses of the house and personal and living expenses for herself and Marion; and (5) these payments would be additional consideration for Marion's promise to transfer an undivided one-half interest in the house to Viva and Jack. (*Mulli*, *supra*, 105 Cal.App.2d at p. 71.) Viva lived in the house with Marion from December 1936 until December 1947, at which time Marion refused to allow Jack to live there and Viva moved out. (*Ibid.*) In the spring of 1937, the house needed repair and improvements. Viva and Marion orally agreed that Viva would pay for the repairs and improvements, as well as the property taxes, insurance, and neighborhood assessment, and that these payments would be additional consideration for Marion's promise to transfer a one-half interest in the property to Viva and Jack. (*Id.* at pp. 71-72.) During the time that Viva and Jack lived with Marion, they contributed over $72,400 to the joint bank account; Marion contributed $1,950 to the account. (*Id.* at p. 72.) The parties used $20,467.80

from the joint account to pay the mortgage and other house-related expenses; another $21,947.80 was used for Marion's personal benefit. (*Ibid.*) In December 1947, after Marion refused to allow Jack to live in the house, she denied that Viva and Jack had any interest in the property and refused to convey their one-half interest to them. (*Ibid.*) Jack and Viva sued Marion for their interest in the property.

The trial court found that Viva and Jack owned an undivided one-half interest in the property, which Marion held in trust for their benefit. (*Mulli, supra,* 105 Cal.App.2d at p. 72) Marion appealed and argued, among other things, that the trial court's findings did not support imposition of a constructive trust. (*Ibid.*) The appellate court disagreed, concluding that the oral agreements had been performed in every respect, except for the conveyance of title, and that Marion had breached the agreements when she refused to allow Jack to live in the house and refused to convey title. (*Id.* at pp. 71, 72.) Following *Haskell*, the court held that Viva and Jack were entitled to enforcement of an express oral trust. The court explained, "As a rule no express trust in land based on an entirely oral transaction can be enforced [citations]. However such trust is enforceable 'if, with the consent of the trustee, the beneficiary as such enters into possession of the land or makes valuable improvements thereon or irrevocably changes his position in reliance upon the trust.' " (*Mulli, supra,* 105 Cal.App.2d at p. 73.) The court observed that Viva and Jack had "made valuable improvements on the property in reliance upon the trust," and held that this supported the trial court's finding that Marion held a one-half undivided interest in the property in trust for Viva and Jack. (*Id.* at pp. 73-74.)

Contrary to Gomez's assertion, the facts here are strikingly similar to those in *Haskell* and *Mulli*. After Valencia's parents told him the Marian House was his, but that he had to pay the expenses related to the property, he did just that. Like the plaintiffs in both *Haskell* and *Mulli,* Valencia moved in, paid the property taxes and insurance, and made numerous improvements to the property. Like the plaintiff in *Mulli,* Valencia entered into an oral agreement with his parents to pay off the existing mortgage debt.

Valencia paid off the mortgages in 2005, and after his parents refinanced the property and used some of the equity for their own expenses, Valencia took on that debt. And he continued to pay for all of the property expenses for a number of years after his parents died.

Gomez argues that although Valencia "testified that his parents stated to him many times the property was his," he never presented any evidence that Parents "ever entered into an agreement whereby if [Valencia] paid the taxes, mortgage, and other expense of maintenance the property was his." The record belies this assertion. Valencia testified, "We had always talked about that that was my house and they were giving me that home. They always had the idea when they bought that home it would be for me and that that would be my house. [¶] . . . They told me that was going to be my house and that I would move in, take it over and have to pay for, . . . property taxes, mortgages, insurance." Valencia testified that when he discussed the condition of the property with his Parents, "they told me that I would be responsible for fixing everything since they gave me that house and that was my home. I needed to fix it up, and they wouldn't put any money towards fixing it. It was all up to me." Valencia also testified that he paid for the mortgages, taxes, insurance and improvements without contribution from anyone for 17 years, a significant period of time. In our view, there is ample evidence of an oral agreement like those in *Haskell* and *Mulli,* namely that Parents had agreed the Marian House would be Valencia's if he took over responsibility for all of the property's expenses.

Gomez also challenges the court's order on the ground that Parents never said "the magic words, 'I hold the property in trust for you[.']" The *Mulli* court addressed this point and concluded that it made no difference that Marion agreed to hold Viva and Jack's one-half interest "*for their benefit*" rather than agreeing to hold the interest "in trust." (*Mulli, supra,* 105 Cal.App.2d at p. 73.) Although there was no evidence that Parents expressly stated that they were holding the property "in trust" or "for the benefit"

of Valencia, there was evidence that they treated the property as if it was his and always intended that he have the property. Gomez did not present any evidence of a contrary intent. Like the plaintiff in *Mulli*, Valencia fully performed his agreement with Parents. We agree with the trial court that there "was a sufficient manifestation of an intention to create a trust, although the word 'trust' was never used."

Gomez argues that "the court found the parents continued to act, up to the date of their demise as if [they] were the owners of the property by refinancing the property a number of times in their names, the last being in 2004 or 2005." Gomez cites a portion of the reporter's transcript in which the court asked Valencia's counsel to address the question of whether Parents' refinancing the property was inconsistent with Parents' holding the property in trust. The court's inquiry is simply not a "finding." We note also that the trustees in both *Haskell* and *Mulli* used the properties in those cases for their own benefit after the trusts were created. Both lived in the properties at issue, and Marion Mulli used the trust agreement as a means of providing for her support. That Parents refinanced did not preclude the trial court from imposing a constructive trust in this case.

We conclude that substantial evidence supports the trial court's order conveying the property to Valencia.

DISPOSITION

The trial court's order on the section 850 petition is affirmed.

_____
GROVER, J.*

WE CONCUR:

_____
RUSHING, P.J.

_____
ELIA, J.

*Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.